

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

GILL PETROLIUM, INC.,

Plaintiff and Appellant,

v.

AMRIK S. HAYER et al.,

Defendants and Respondents.

C047075

(Super. Ct. No.
127841)

APPEAL from a judgment of the Superior Court of Butte County, Steven J. Howell, Judge. Affirmed.

Jay-Allen Eisen Law Corporation, Jay-Allen Eisen, C. Athena Roussos; Kerr Law Group, Bruce L. Kerr and D. Robert Morris for Plaintiff and Appellant.

Dell'Ario & LeBoeuf, A. Charles Dell'Ario, Jacques B. LeBoeuf; and Harvey W. Stein for Defendants and Respondents.

* Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of parts I, II and IV.

Plaintiff Gill Petroleum, Inc., obtained an unlawful detainer judgment against defendants Amrik S. Hayer and Manjinder S. Hayer, which declared the forfeiture of defendants' lease of the business premises and awarded plaintiff "per diem damages" for the period of time in which defendants were in the premises after expiration of the three-day notice to pay rent or vacate the premises. Thereafter, the trial court granted defendants' motion for relief from forfeiture of the lease (Code Civ. Proc., § 1179) and ordered that "equity will be served if Defendants pay to Plaintiff only the contract amount of rent (including . . . penalties and interest) as opposed to the per diem damages set forth in the judgment" (Further section references are to the Code of Civil Procedure unless otherwise specified.) Plaintiff appeals.

In the published portion of this opinion, we reject plaintiff's claim that the trial court "had no jurisdiction under [section] 1179 to reconsider and modify the [per diem] damages awarded in the judgment." Section 1179 provides that the court "may relieve a tenant against a forfeiture of a lease . . . and restore [the tenant] to his or her former estate or tenancy, in case of hardship" (Italics added.) As we will explain, section 1179 gives the court the authority to relieve a defendant of burdens of the judgment in an unlawful detainer action. It provides the court with broad equitable discretion to determine the conditions upon which relief will be granted "'to the end that exact justice may be done.'" (See *Schubert v. Lowe* (1924) 193 Cal. 291, 295.) If, as plaintiff suggests, the power under section 1179 were limited to removing from an unlawful detainer judgment the declaration of the

forfeiture of a lease, then the court in many instances would be unable to provide the other relief authorized by the statute, i.e., to restore the tenant to his or her former tenancy.

In the unpublished parts of this opinion, we reject the parties' other contentions, including plaintiff's claim that the trial court erred in granting relief from forfeiture. Consequently, we shall affirm the court's order.

FACTS

The parties' business relationship began in 1999, when defendants purchased an ongoing business located in Oroville. The business, which consists of a market and gas station, was known as Cosby's Market and has since been renamed the Lakeside Market. The business, which was owned by Rosewood Investments, Inc., and the premises, which belonged to plaintiff, appear to have common ownership and were under the control of Mohinder Gill. Defendants purchased the business from Rosewood Investments, Inc., for \$626,965. They entered into a long term lease with plaintiff for the premises.

The lease had an initial term of 10 years. It gave defendants four options to extend for five-year periods. The initial rent was \$6,200 per month. The rent would increase by \$350 after five years and by another \$350 after ten years. The lease also provided for rent increases between 5 and 10 percent, based upon the cost of living, at the commencement of the option periods.

The lease contained a provision requiring disputes to be resolved through arbitration. That provision specifically excluded

from its scope the failure of the lessee to pay rent or additional rent.

The lease provided: "Lessee is responsible to obtain, maintain in effect all permits to operate tanks and gas station and pay all city, county, state and federal environment fees for the operation of gas station." If defendants failed to make any payment for which they were obligated, the lease provided that plaintiff could make the payment and the sums would be deemed additional rent payable upon demand.

By statute, the owner or operator of an underground gasoline storage tank is required to obtain a permit. (Health & Saf. Code, § 25284.) Fees, based on gallonage, are imposed for the operation of an underground storage tank. (Health & Saf. Code, §§ 25299.41-25299.43.) The owner of the tank is responsible for payment of the fees, even if it has by contract required an operator of the tank to pay the fees. (Cal. Code Regs., tit. 18, §§ 1212-1213.) While the owner remains ultimately responsible for the payment of fees, an owner is not precluded from requiring an operator to pay the fees. (*Ibid.*)

Here, the parties dispute whether the obligation and extent of underground storage tank fees were disclosed in the negotiations to purchase the business and lease the premises. It appears the fees were not paid during the period in which Rosewood Investments, Inc., operated the business before defendants purchased it. When defendants took over the business, they did not pay the fees.

Eventually, plaintiff told defendants that they were obligated to pay the underground storage tank fees and asked for proof that

they were doing so. Defendants did not immediately respond; however, at various times they have asserted that (1) plaintiff is obligated to pay the fees pursuant to the lease, (2) plaintiff committed fraud in failing to disclose the nature and extent of the fees during negotiations, and (3) state law imposes the obligation for the fees upon the owner rather than the operator of an underground storage tank.

After several months and various correspondence failed to resolve the matter, plaintiff filed an unlawful detainer complaint. Defendants responded that the matter was subject to arbitration. Plaintiff agreed with that assertion and did not go forward with the unlawful detainer action.

In June 2001, plaintiff paid the State Board of Equalization \$31,526 for underground storage tank fees for the third quarter of 1999 through the first quarter of 2001. Plaintiff demanded that sum from defendants as additional rent under the lease. When defendants did not pay, plaintiff served them with a three-day cure or quit notice, and then filed a complaint for unlawful detainer. On defendants' petition, the trial court referred the matter to arbitration to determine whether the dispute was subject to arbitration.

The arbitrator concluded that the lease imposed on defendants the obligation for payment of the underground storage fees. When plaintiff paid the fees and demanded reimbursement from defendants, the fees became additional rent under the lease. Since the lease's arbitration provision excluded from its coverage a failure to pay rent or additional rent, the arbitrator determined that dispute was

not subject to arbitration. The arbitrator awarded attorney fees and costs to plaintiff.

After arbitration concluded, plaintiff discovered a flaw in the unlawful detainer complaint. The fees plaintiff had demanded from defendants as additional rent, \$31,526, included fees for the entire third quarter of 1999, while defendants had been in possession under the lease for only one month of that quarter. Plaintiff dismissed the unlawful detainer complaint and started anew with a demand for the corrected sum of \$23,509. However, defendants failed to pay, and eventually another complaint for unlawful detainer was filed.

There was, at that time, a prior unlawful detainer complaint that had not been dismissed. When defendants demurred on the ground of a prior action pending, plaintiff dismissed both complaints and filed yet another complaint for unlawful detainer.

Following a trial, the court found in favor of plaintiff and entered a judgment forfeiting the lease, ordering restoration of the premises to plaintiff, awarding plaintiff damages, and declaring plaintiff's right to reasonable attorney fees and costs. The court granted a temporary stay of the judgment, provided that defendants performed certain conditions.

Defendants petitioned for relief from forfeiture. (§ 1179.) When the matter came on for hearing, the trial court indicated an intent to grant the petition for relief. The parties were given the opportunity to confer and were able to stipulate to most of the

conditions to be imposed upon defendants in return for relief from forfeiture.¹

There were two matters on which the parties could not agree. First, at trial of the unlawful detainer action, Mohinder Gill had opined that the fair rental value of the premises was \$10,200 per month or \$340 per day. The unlawful detainer judgment awarded plaintiff "per diem damages" in the amount of \$340 per day for all of the time defendants were in possession of the premises after the expiration of the three-day cure or quit notice.² Defendants sought relief from the per diem damages in favor of the rent called for in the lease.

Second, soon after the unlawful detainer judgment was entered, plaintiff negotiated a lease for adjoining property with a new tenant. The new tenant's business would include propane and pizza sales, which would compete with defendants' business. The tenant also intended to build a car wash that could interfere with the view of defendants' market from the roadway. Under their lease,

¹ The unlawful detainer complaint was based solely on the nonpayment of rent in the form of the underground storage tank fees. However, there were other matters of dispute that were resolved by the stipulated conditions, including such things as the types and amounts of insurance defendants were required to maintain, and responsibility for the repair and maintenance of the building and equipment.

² Defendants did not present evidence of fair rental value at the trial of the unlawful detainer complaint. In support of their petition for relief from forfeiture, defendants submitted the declaration of a commercial property appraiser, who disputed Mohinder Gill's reasoning and concluded the fair rental value would not exceed \$6,800 per month.

defendants' consent was required for these uses of adjoining property. Plaintiff asked the trial court to require defendants to consent to the new lease as a condition of relief from forfeiture.

The trial court ruled in favor of defendants on each of the disputed issues. It entered an order granting relief from forfeiture and incorporating the parties' stipulated conditions.

DISCUSSION

I*

Defendants claim the appeal must be dismissed because plaintiff accepted the benefits of the order granting relief from forfeiture. Under the circumstances presented, we disagree.

This case commenced as an action for unlawful detainer. Plaintiff asserted that defendants had failed to perform their obligations under their lease and, as a consequence, had forfeited their rights under the lease. The trial court found in favor of plaintiff in all respects and entered judgment in its favor. Neither side appealed from the unlawful detainer judgment.

Defendants petitioned the trial court for relief from forfeiture. (§ 1179.) The court granted relief and imposed conditions for such relief. Defendants stipulated to all of the conditions imposed by the court. Conditions urged by plaintiff that were not stipulated by defendants were not imposed by the court. Plaintiff appealed from the order granting relief from forfeiture.

This placed the parties in something of a quandary. Section 1179 gives a trial court the discretion to relieve a tenant from forfeiture of a lease, but does not expressly state the effect of

an appeal from such an order. In contrast, section 1176 states that an appeal from an unlawful detainer judgment does not automatically stay proceedings on the judgment. If the appeal stayed the order granting relief from forfeiture (see § 916, subd. (a)), and the unlawful detainer judgment was not stayed, then defendants could be ousted from the premises regardless of the merits of the appeal.

To resolve this matter, the parties entered into a stipulation regarding their respective duties and obligations pending the appeal. The court accepted the stipulation and entered an order thereon. Among other things, the court ordered, pursuant to the stipulation: "During the pendency of plaintiff's appeal of the Order Granting Relief from Forfeiture, the parties are ordered to perform the same duties and obligations toward one another as would have been required of them if the appeal had not been filed." Based on the stipulation, the court stayed the order granting relief from forfeiture, the underlying judgment of unlawful detainer, and the parties' pending motions.

As a general rule, the voluntary acceptance of the benefits of a judgment or order is a bar to the prosecution of an appeal therefrom. (*H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1362.) The rule is based on the notion that the acceptance of the fruits of a judgment or order, and an appeal challenging the validity of the judgment or order, are inconsistent; therefore, the election of either is a waiver or renunciation of the other. (*Ibid.*) There are a number of exceptions to the general

rule. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 216-221, pp. 272-279.)

For our purposes, it is sufficient to note that the general rule is not jurisdictional. It is premised on concepts of waiver. (See *H.D. Arnaiz, Ltd. v. County of San Joaquin*, *supra*, 96 Cal.App.4th at pp. 1362-1363; *Lovett v. Carrasco* (1998) 63 Cal.App.4th 48, 53.) Parties cannot, by agreement or consent, confer appellate jurisdiction where there is none. (*Munoz v. Florentine Gardens* (1991) 235 Cal.App.3d 1730, 1732.) However, where, as here, there is appellate jurisdiction and the issue is one of waiver, the parties will be held bound by their stipulations and agreements. (*Estate of Poisl* (1957) 48 Cal.2d 334, 337-338.) If a party agrees that an opponent may accept the benefits of a judgment without waiving the right to prosecute an appeal, then the acceptance of such benefits does not bar the appeal. (*Ibid.*)

Defendants stipulated before the trial court that they would perform their obligations and that plaintiff could accept performance pending the resolution of the appeal. That was the time and place to voice a claim that acceptance of performance would waive the right of appeal. Through their stipulation, defendants necessarily agreed that acceptance of their performance would not waive the right of appeal. Defendants are bound by their agreement. Consequently, we decline to dismiss this appeal.

II*

Plaintiff contends that defendants failed to establish sufficient grounds for relief from forfeiture of their lease.

Section 1179 states in pertinent part: "The court may relieve a tenant against a forfeiture of a lease or rental agreement, whether written or oral, and whether or not the tenancy has terminated, and restore him or her to his or her former estate or tenancy, in case of hardship, as provided in Section 1174. The court has the discretion to relieve any person against forfeiture on its own motion. [¶] An application for relief against forfeiture may be made at any time prior to restoration of the premises to the landlord. . . . In no case shall the application or motion be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, so far as the same is practicable, be made."

It has been said that section 1179 vests near plenary discretion in the trial court. (*Superior Motels, Inc. v. Rinn Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1064.) In balancing the equities, the court must take into consideration all the circumstances of the case and then use its best discretion in determining whether relief is warranted. (*Hignell v. Gebala* (1949) 90 Cal.App.2d 61, 70; see also *Thrifty Oil Co. v. Batarse* (1985) 174 Cal.App.3d 770, 778.)

"The matter of granting or denying such an application is one which lies so largely in the discretion of the trial court that it would require a very clear showing of an abuse of such discretion to justify a reversal of the order made thereon." (*Matthews v. Digges* (1920) 45 Cal.App. 561, 566; see also *Superior Motels, Inc. v. Rinn Motor Hotels, Inc.*, *supra*, 195 Cal.App.3d at p. 1064; *Thrifty Oil Co. v. Batarse*, *supra*, 174 Cal.App.3d at p. 778; *Hignell v. Gebala*, *supra*, 90 Cal.App.2d at pp. 70-71.)

"Where a trial court has discretionary power to decide an issue, as here, we are not authorized to substitute our judgment of the proper decision for that of the trial judge. The trial court's exercise of its discretion will not be disturbed on appeal in the absence of a showing of palpable abuse amounting to a manifest miscarriage of justice. [Citations.] In other words, an appellate court will find an abuse of discretion only if the trial court's decision exceeds the bounds of reason, all of the circumstances being considered. [Citation.]" (*Bauer v. Bauer* (1996) 46 Cal.App.4th 1106, 1117.)

Plaintiff asserts that defendants failed to prove financial hardship if their lease is forfeited. We disagree. It is relevant that defendants purchased the business as a going concern in the location of the leased premises. The lease from plaintiff, with its extension options, would permit defendants to conduct business in that location for 30 years. The lease provided for initial rent of \$6,200 per month. It provided for rent increases at five-year intervals, but limited the amount of those increases. In testimony at the unlawful detainer trial, Mohinder Gill opined the rental value of the premises was then \$10,200 per month. The forfeiture of a long-term lease for business premises at a favorable and restricted rent is hardship.³

³ So long as plaintiff is paid the rent specified in the lease it negotiated with defendants, Gill's opinion that plaintiff could obtain a greater rent if it succeeds in ousting defendants from the property is not hardship to plaintiff. (See *Hastings v. Matlock* (1985) 171 Cal.App.3d 826, 839.)

More importantly, it is obvious that if defendants forfeit their lease, then the business, as a going concern, will be kaput. Defendants purchased the business as a going concern for \$626,965, and then expended significant additional sums on such things as improvements and equipment. Amrik Hayer declared that if they forfeit the lease, then, with the exception of their liquor license and whatever fixtures and equipment that could be salvaged, their investment would be completely lost.

Plaintiff notes that by the time they moved for relief from forfeiture, defendants had been operating the business for nearly four years and, presumably, reaped profits from their operation. Plaintiff asserts that if defendants lose their lease, the only investment they will lose is the difference between the sums they put into the business and the sums they reaped in profits. Plaintiff argues that since the amount of the profits was not shown, defendants failed to establish they would lose anything on their investment. We are not persuaded.

Any income defendants derived from the business in the few years before the motion for relief from forfeiture was attributable both to their investment and their personal efforts in operating the business. (See *Beam v. Bank of America* (1971) 6 Cal.3d 12, 17.) If we accepted plaintiff's reasoning, we would nevertheless conclude that the income derived from personal efforts could not be offset against defendants' investment. (*Ibid.*)

In any event, we cannot accept plaintiff's reasoning because the value of a successful business does not typically deplete in a few years. A successful business tends to increase in value,

through both normal market forces and the personal efforts of its proprietors. (See *Beam v. Bank of America*, *supra*, 6 Cal.3d at p. 17; *Pereira v. Pereira* (1909) 156 Cal. 1, 7.) Regardless of any income defendants derived from operating the business, the evidence supports a finding that the business had substantial value at the time of the petition for relief from forfeiture.

Plaintiff says that defendants failed to establish the salvage value of their fixtures and equipment and, thus, made it impossible to determine whether they would actually suffer loss from closure of the business. It is common knowledge that the value of a successful business as a going concern is often substantially greater than the salvage value of its physical assets. (*In re Marriage of Foster* (1974) 42 Cal.App.3d 577, 581-582; see 26 U.S.C., § 197(d) [identifying, among other things, both goodwill and going concern value as intangible business assets].) In order to conclude that defendants would suffer substantial loss from the forfeiture of the lease and closure of the business, it was not necessary for the trial court to identify precisely the extent of the losses they would suffer. (See *Clemente v. State of California* (1985) 40 Cal.3d 202, 219; *Fishbaugh v. Fishbaugh* (1940) 15 Cal.2d 445, 453.)

In his declaration, Amrik Hayer explained that defendants purchased the business through cash payments and the execution of a promissory note. At the time of the petition for relief from forfeiture, they still owed \$297,745 on the promissory note. Amrik Hayer said: "However, practically speaking, if we lose the premises we will be unable to continue making payments on said note. We will then have no business and owe additional amounts for

fees and costs to Mr. Gill in addition to the balance on the note. Furthermore, with the anticipated execution on our business assets to satisfy the remainder of the Judgment which has been entered in this case, we will be left with no means and no credit with which to start another business."

Plaintiff asserts that if defendants would be unable to make their payments on the note, the obligation "could not be a loss to them at all; it was money that they hadn't paid and, according to them, they couldn't pay if they lost the lease. The only loss would be to Gill and Rosewood." The argument is superficial at best. The obligation of the note will not go away if defendants forfeit their lease and lose the business. Gill and Rosewood could reduce the obligation to judgment and then pursue creditor remedies against defendants until the obligation is satisfied or defendants are forced into bankruptcy. Absent proof that Gill and Rosewood would forgive the obligation (and there is nothing whatsoever to suggest they would), the loss of the business and the means of making payments on the obligation is manifest hardship.

Amrik Hayer noted that the unlawful detainer judgment imposed damages plus attorney fees and costs against defendants. He feared that loss of the business together with execution of the obligation of the note and judgment upon defendants' remaining business assets would leave them with "no means and no credit with which to start another business." Plaintiff asserts the monetary judgment is not a loss that would be caused by forfeiture of the lease. Perhaps not, but forfeiture of the lease would leave defendants with substantial debt and no immediate means of satisfying it. Execution on their

salvaged business assets could, as Amrik Hayer fears, leave them without the means or credit to start anew.

Amrik Hayer declared that he receives a monthly payment of \$3,881.93 on a note from the sale of a business he sold before defendants bought the Lakeside Market. Otherwise, since Amrik and his son, Manjinder, and their families relocated to Oroville to operate the Lakeside Market, the income from that market has been their sole source of income. Plaintiff asserts: "There was no showing that, if the Hayers did not have to devote their time and efforts to the Lakeside Market, they would be unable to do what reasonable people in need of income do: find a job"

This let-them-eat-cake argument ignores the equitable underpinnings of section 1179. Equity abhors forfeitures. (*Hopkins v. Woodward* (1932) 216 Cal. 619, 622; see 13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 20, pp. 308-309.) In exercising equitable discretion under section 1179, a trial court is not required to indulge a strict and narrow definition of hardship. The evidence establishes that if defendants forfeit their lease, they will lose the business which is their primary source of income and into which they invested substantial time and money; and they will be left with substantial debt. That is significant and manifest hardship.

Plaintiff argues that hardship alone does not justify relief, "[t]here must be something more to justify relieving the tenant from the forfeiture." (See *Olympic Auditorium, Inc. v. Superior Court* (1927) 81 Cal.App. 283, 285.)

It is likely that some measure of hardship could be shown in virtually every case in which a tenant forfeits a lease. (*Thrifty Oil Co. v. Batarse, supra*, 174 Cal.App.3d at p. 777.) To conclude that some showing of hardship compels relief from forfeiture would "strangle the discretionary power at the very inception of its exercise." (*Olympic Auditorium, Inc. v. Superior Court, supra*, 81 Cal.App. at p. 285.) Upon consideration of other factors, there may be a variety of sound reasons that relief should not be granted. (*Ibid.*) Accordingly, courts have held that a showing of hardship is not sufficient to *compel* a trial court to grant relief. (*Ibid.*; see also *Thrifty Oil Co. v. Batarse, supra*, 174 Cal.App.3d at p. 777.)

However, the courts have not held that a showing of hardship is not sufficient to *support* relief. Hardship is, in fact, the only factor specifically identified in section 1179. Yet hardship is relative; it may be minor, moderate, substantial, or even extreme. In balancing the equities, a trial court must consider all the relevant factors. (*Thrifty Oil Co. v. Batarse, supra*, 174 Cal.App.3d at p. 778; *Hignell v. Gebala, supra*, 90 Cal.App.2d at p. 70.) But neither the statute nor decisional authority establishes that substantial hardship is not itself sufficient to justify relief.

Plaintiff complains that during the proceedings, defendants accused it, through Mohinder Gill, of acting in bad faith. In fact, plaintiff asserts, it was defendants who acted in bad faith. Plaintiff says the record "showed most vividly [] that relations between the parties have been hostile almost from the outset.

Almost from the outset, their dealings have been marked with anger and hostility." In this light, plaintiff argues the trial court's "ruling is akin to refusing to terminate a marriage between spouses whose incessant fighting shows that irreconcilable differences have led to the irremediable breakdown of their relationship."

The parties' relationship has been acrimonious, and this has not been one sided. Neither side is faultless. The behavior of the parties is a matter to be weighed in the balance on a motion for relief from forfeiture. The conduct of the defendants, even if harshly characterized, does not preclude the trial court from granting relief in the face of substantial hardship. (*Hignell v. Gebala*, *supra*, 90 Cal.App.2d at pp. 70-71.)

After the trial court entered judgment for unlawful detainer, defendants accepted the decision of the court. In moving for relief from forfeiture, defendants told the court they were ready, willing, and able to comply with all the obligations of their lease and any conditions the court saw fit to impose. The court took defendants at their word. This was a matter entrusted to the discretion of the trial court.⁴ In view of the manifest showing of substantial

⁴ As a result of their inability to resolve their dispute short of litigation, defendants suffered significant consequences. They have had a judgment forfeiting their lease imposed upon them. They have had to appeal to the trial court's equitable discretion for relief, an application that was by no means certain to succeed. They have had to agree to conditions that were not part of the unlawful detainer proceedings and which have not been adjudicated. They have had imposed upon them a substantial award of attorney fees and costs in the arbitration. And in the trial court proceedings, in addition to their own attorney fees and costs, they are required to bear a substantial

hardship defendants would suffer upon forfeiture, and their assurances that they would fulfill the obligations of their lease and conditions imposed by the court, the determination to grant relief from forfeiture was not an abuse of discretion.

III

In the unlawful detainer judgment, the trial court awarded plaintiff per diem damages in the amount of \$340 for every day defendants remained in possession of the premises after expiration of the three-day cure or quit notice. This was based upon the testimony of Mohinder Gill that, in his opinion, the premises had a fair rental value of \$340 per day. This amount was substantially more than the rent specified in the lease. In granting relief from forfeiture, the trial court held that "equity will be served if Defendants pay to Plaintiff only the contract amount of rent (including, of course, the underground storage tank fees, penalties and interest) as opposed to the per diem damages set forth in the judgment"

Plaintiff contends the trial court lacked jurisdiction to order defendants to pay the contract rent rather than per diem damages. It relies upon the decision in *Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, where the court said: "Once judgment has been entered, however, the court may not reconsider it and loses its *unrestricted* power to change the judgment. It may correct judicial error only through certain limited procedures

attorney fee and cost award in favor of plaintiff. The trial court could reasonably conclude that defendants will not lightly risk similar consequences in the future.

such as motions for new trial and motions to vacate the judgment." (*Id.* at p. 1606, orig. italics; see also *Ramon v. Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1236-1237.)

In the decisions upon which plaintiff relies, motions for a new trial and motions to vacate a judgment are illustrative rather than exhaustive. There are other procedures by which, in an appropriate case, a judgment may be modified. (See, e.g., 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, §§ 81-84, pp. 610-615.) And courts retain the inherent equitable power to relieve a party from the burdens of a judgment, again in an appropriate case. (See 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 214 et seq., p. 718 et seq.)

Section 1179 is a specific statutory procedure that vests a trial court with the authority to affect a judgment after its entry.⁵ The provision applies solely in unlawful detainer actions.

⁵ Section 1179 states: "The court may relieve a tenant against a forfeiture of a lease or rental agreement, whether written or oral, and whether or not the tenancy has terminated, and restore him or her to his or her former estate or tenancy, in case of hardship, as provided in Section 1174. The court has the discretion to relieve any person against forfeiture on its own motion. [¶] An application for relief against forfeiture may be made at any time prior to restoration of the premises to the landlord. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served at least five days prior to the hearing on the plaintiff in the judgment, who may appear and contest the application. Alternatively, a person appearing without an attorney may make the application orally, if the plaintiff either is present and has an opportunity to contest the

(*Pehau v. Stewart* (1952) 112 Cal.App.2d 90, 99.) It vests the court with discretion to relieve a tenant from forfeiture and restore him or her to his or her former estate or tenancy. So long as the court imposes the statutory conditions, the full payment of rent due or full performance of conditions or covenants so far as practicable, the court has broad equitable discretion to determine the conditions upon which relief will be granted. (*Olympic Auditorium, Inc. v. Superior Court, supra*, 81 Cal.App. at p. 287.)

While section 1179 mandates that the trial court require the full payment of rent due, it does not make the court require the tenant to pay other sums. Indeed, if as plaintiff suggests, the court's power is limited to removing from the unlawful detainer judgment the declaration of forfeiture, then the court in many instances would not be able to provide the other relief authorized by the statute, namely, to restore the tenant to his or her former estate or tenancy. We find the words of California's Supreme Court compelling: "'The power of a court of equity is invoked by plaintiff in every action in forcible detainer, when he seeks in his complaint to have a forfeiture declared on account of default in conditions of the lease. . . . If such an equitable power is in a court in cases of this class, of which we have no doubt, no reason is apparent why such equitable power may not be extended

application, or has been given ex parte notice of the hearing and the purpose of the oral application. In no case shall the application or motion be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, so far as the same is practicable, be made."

into a full examination of all the equities involved, to the end that exact justice may be done.'" (*Schubert v. Lowe, supra*, 193 Cal. at p. 295, quoting *Gray v. Maier & Zobelein Brewery* (1906) 2 Cal.App. 653, 658.)

Section 1179 does not, by its terms or by clear implication, limit a trial court's equitable discretion in the manner suggested by plaintiff. To the contrary, to fully serve its purpose, the statute must be construed to vest the trial court with equitable power to consider and adjust all of the equities between the parties. We perceive no reason to impose artificial judicial limitations upon the court's exercise of its equitable authority. Accordingly, we reject plaintiff's contention.

IV*

The unlawful detainer judgment was entered on May 22, 2003. Defendants moved for a temporary stay, and the application was heard on June 5, 2003. The trial court granted the application for a stay, with conditions. Defendants then petitioned for relief from forfeiture. When the petition was being considered, plaintiff's counsel informed the court that by lease dated June 6, 2003, plaintiff had agreed to rent adjoining premises to a tenant whose business would potentially conflict with defendants' lease rights. Plaintiff asked the court to compel defendants to consent to the new tenant as a condition of relief from forfeiture. The court declined to impose such a condition.

Plaintiff contends the refusal to impose a consent condition was a manifest abuse of discretion. It reasons that defendants forfeited their lease when they failed to pay the underground

storage tank fees and from that time until relief from forfeiture was granted, they had no lease. Thus, plaintiff concludes that in granting relief from forfeiture, "[t]he court was writing on a clean slate." Defendants should be treated like a new tenant coming onto the property after another tenant already had the right to use parts of the shopping center in ways that could interfere with defendants' use. Plaintiff adds that while the lease precluded conflicting uses without defendants' consent, their consent could not be withheld unreasonably.

We reject plaintiff's contention for three reasons.

First, defendants were not strangers to the premises seeking a lease for the first time; they had been operating their business in the premises since entering into their lease. In granting the petition for relief from forfeiture, the trial court was restoring defendants to their former tenancy. (§ 1179.) Accordingly, the court was not writing on a clean slate. While it had discretion to impose conditions on relief from forfeiture, the court was not required to rewrite the parties' lease at the plaintiff's behest.

Second, plaintiff acted before the unlawful detainer judgment became final. Defendants had various remedies available to them at the time, such as a motion for a new trial, a motion to vacate, appeal, and, of course, a petition for relief from forfeiture. Defendants signaled their intent to exercise their remedies by moving for a temporary stay. Plaintiff acted after the application for a stay was heard, but before the court could rule. Under the circumstances, the trial court reasonably could conclude that the

rapidity of plaintiff's action was intended to prejudice defendants before their rights could be finally determined.

Third, and finally, there is insufficient information in the record upon which the trial court reasonably could exercise its equitable discretion. All that is in the record is counsel's representation that plaintiff entered into a lease with a new tenant whose business could conflict with defendants' lease rights. The effect such a business might have on defendants' business could be anywhere from trivial to devastating. There simply is no basis in the record for making an evaluation of the reasonableness of plaintiff's requested condition. Consequently, the trial court reasonably could conclude plaintiff's interests were adequately protected by the good faith and reasonableness standard applicable to defendants' decision whether to give consent. The court did not abuse its discretion in refusing to compel defendants to give consent to a tenancy about which the court knew virtually nothing.

DISPOSITION

The trial court's order granting relief from forfeiture is affirmed. Plaintiff shall reimburse defendants for their costs on appeal. (Cal. Rules of Court, rule 27(a).)

SCOTLAND, P.J.

We concur:

SIMS, J.

DAVIS, J.